

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HUFTILE,

Plaintiff,

No. CIV S-03-1522 FCD DAD P

vs.

L.C. MICCIO-FONSECA,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Plaintiff is detained at Coalinga State Hospital pursuant to California's Sexually Violent Predators Act (SVPA), California Welfare and Institutions Code § 6600, et seq. and is proceeding pro se with a civil rights action seeking injunctive relief under 42 U.S.C. § 1983. Following remand by the U.S. Court of Appeals for the Ninth Circuit, this court directed the U.S. Marshal to serve process on defendant Miccio-Fonseca and ordered the defendant to file her response to the complaint. (Order filed 5/10/06 at 2.)

Defendant's motion to dismiss the complaint is now before the court. In that motion defendant Miccio-Fonseca argues that plaintiff's complaint fails to state a cognizable claim, is barred by the Eleventh Amendment and the Younger abstention doctrine, and that plaintiff lacks standing to bring this action. Plaintiff did not file an opposition to the motion,

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1 but instead has filed an amended complaint. Plaintiff has also filed a motion for preliminary
2 injunction and motion to reinstate his claim for declaratory relief and damages.

3 The Federal Rules of Civil Procedure provide that a party may amend his or her
4 pleading "once as a matter of course at any time before a responsive pleading is served." Fed. R.
5 Civ. P. 15(a). A motion to dismiss, such as that filed by defendant here, is not a "responsive
6 pleading" within the meaning of Rule 15. See Crum v. Circus Circus Enterprises, 231 F.3d 1129,
7 1130 n.3 (9th Cir. 2000); Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning
8 Agency, 216 F.3d 764, 788 (9th Cir. 2000). Accordingly, plaintiff did not need to obtain leave of
9 court to file his amended complaint. Plaintiff's amended complaint supersedes the original
10 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once an amended pleading is
11 filed, the original pleading no longer serves any function in the case. Id.; see also E.D. Local
12 Rule 15-220. In light of plaintiff's amended complaint, defendant's motion to dismiss will be
13 denied without prejudice. The court will set a deadline for defendant to file either her answer or
14 a new motion to dismiss the amended complaint. If defendant Miccio-Fonseca elects to proceed
15 by filing another motion to dismiss, she may incorporate by reference any applicable arguments
16 presented in the motion she has already filed.

17 Defendant has also requested that this court take judicial notice of the cases
18 brought in state court by plaintiff, this court's May 10, 2006 order directing service by the U.S.
19 Marshal, the waiver of service of summons, and plaintiff's habeas petition filed with the District
20 Court. The request will be granted. See United States v. Wilson, 631 F.2d 118, 119 (9th Cir.
21 1980) ("a court may take judicial notice of its own records in other cases, as well as the records
22 of an inferior court in other cases."); Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1
23 (N.D. Cal. 1978) ("the power of a court to take judicial notice of its own records is amply
24 established").

25 In his motion for preliminary injunctive relief, plaintiff contends that defendant
26 Miccio-Fonseca used an "illegal Clinical Evaluator's Handbook and Standardized Assessment

1 Protocol (SAP) manual” in her March 26, 2001 psychological evaluation and June 27, 2002
 2 updated evaluation which were used for plaintiff’s SVPA proceeding.¹ Although defendant
 3 Miccio-Fonseca has not conducted further evaluations of plaintiff, plaintiff argues that her
 4 evaluation continues to harm him because it is relied upon by other evaluators and taints their
 5 evaluations. Plaintiff attaches portions of commitment evaluations conducted by three clinical
 6 psychologists in 2004 and 2005, listing defendant’s evaluations along with several other
 7 documents which were reviewed in the preparation of those evaluations.

8 The legal principles applicable to a request for injunctive relief are well
 9 established. To prevail, the moving party must show either a likelihood of success on the merits
 10 and the possibility of irreparable injury, or that serious questions are raised and the balance of
 11 hardships tips sharply in the movant’s favor. See Coalition for Economic Equity v. Wilson, 122
 12 F.3d 692, 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ’g Co., 762 F.2d 1374,
 13 1376 (9th Cir. 1985). The two formulations represent two points on a sliding scale with the focal
 14 point being the degree of irreparable injury shown. Oakland Tribune, 762 F.2d at 1376. “Under
 15 any formulation of the test, plaintiff must demonstrate that there exists a significant threat of
 16 irreparable injury.” Id. In the absence of a significant showing of possible irreparable harm, the
 17 court need not reach the issue of likelihood of success on the merits. Id.

18 The court finds that plaintiff’s motion is defective and premature. Plaintiff has
 19 failed to comply with Local Rule 65-231(d) which requires a brief on the legal issues and a
 20 declaration that demonstrates irreparable injury. Furthermore, since this action is proceeding
 21 solely as an action for injunctive relief, a motion requesting the same relief is premature. Finally,

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 23 ¹ At the time plaintiff filed his complaint, he had been civilly detained at Atascadero
 24 State Prison since November 19, 2002. On December 10, 2003, plaintiff was discharged to
 25 California Department of Corrections custody following revocation of his parole for being in
 26 possession of child pornography. A civil recommitment trial was set for August 23, 2005. See
Huftile v. Miccio-Fonseca, 410 F.3d 1136, 1142 (9th Cir. 2005). Although the court does not
 have further information about the trial, it appears that plaintiff was found to meet the criteria for
 civil commitment. On September 6, 2005, plaintiff was transferred to Coalinga State Hospital
 where he remains detained. (Second Am. Compl., Attach. at 6.)

1 plaintiff is advised that the documents attached to his motion are not sufficient by themselves to
2 demonstrate irreparable harm.

3 On September 14, 2006, plaintiff filed a document styled, "Motion And Notice Of
4 Motion To Reinstate Declaratory Relief And Damages Based Upon Newly Discovered
5 Evidence." Plaintiff argues that the Ninth Circuit Court of Appeals ignored the fact that he was
6 discharged from Department of Mental Health jurisdiction and turned over to the California
7 Department of Corrections in 2003, and that his claim for damages and declaratory relief are
8 therefore not Heck-barred as was determined in Huftile v. Miccio-Fonseca, 410 F.3d 1136 (9th
9 Cir. 2005). In this regard, the Ninth Circuit made the following determination:

10 The district court record does not include a transcript of Huftile's
11 civil commitment proceeding. However, the structure of the SVPA
12 statutory scheme indicates that the success of Huftile's § 1983
13 claim would necessarily imply the invalidity of his civil
14 commitment. Before the California Director of Mental Health can
15 forward a request for an SVPA commitment petition to the
16 appropriate county, two evaluators must agree that "the person has
17 a diagnosed mental disorder so that he or she is likely to engage in
18 acts of sexual violence without appropriate treatment and custody."
19 Cal. Welf. & Inst. Code § 6601(d). An attorney for that county
20 may then file a petition for commitment. Id. § 6601(I). A judge
21 must then review this petition to determine whether there is
22 probable cause to believe that the person "is likely to engage in
23 sexually violent predatory criminal behavior" upon release. Id. §
24 6602(a). Because Dr. Miccio-Fonseca was one of Huftile's
25 evaluators, a judgment in favor of Huftile in his § 1983 action
26 would necessarily imply the invalidity of his civil commitment.
That is, if only one evaluator, rather than two, had concluded that
Huftile had a "mental disorder" within the meaning of § 6601(d),
there would have been no basis for the state Director of Mental
Health to send the request to the county, no basis for the county
attorney to file a petition for commitment, and no basis for the
judge to go forward with a probable cause determination.

22 Id. at 1140-41.

23 Plaintiff presented this same argument recently in Huftile v. Vognsen, No. CIV S-
24 03-0604 DFL JFM P (Court doc. no. 29, filed 9/14/06). In that case, the assigned magistrate
25 judge recommended that plaintiff's argument be rejected, stating as follows:.

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1 The revocation of plaintiff's parole had no legal impact on his
2 civil commitment other than to terminate his custody in the
3 Department of Mental Health and return him to the custody of the
4 Department of Corrections. His discharge from the civil
5 commitment did not invalidate or call into question the underlying
6 validity of the civil commitment. . . .

7 Moreover, because the circuit court was aware of plaintiff's
8 2003 transfer from the Department of Mental Health to the custody
9 of the California Department of Corrections at the time plaintiff
10 appealed the Heck dismissal in Huftile v. Miccio-Fonseca, 410
11 F.3d at 1136, this court is bound to follow the court's finding that
12 plaintiff is barred from seeking declaratory relief or damages
13 "unless and until his civil commitment is invalidated." Id. t 1142.
14 Just because the circuit court did not expressly reference the fact
15 that plaintiff had been transferred to the custody of the California
16 Department of Corrections does not mean that the court did not
17 consider that fact in reaching its decision.

18 (Id., court doc. no. 35, filed 11/30/06 at 3-4.) For these same reasons plaintiff's motion to
19 reinstate his claims for declaratory relief and damages in this case should also be denied.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Defendant's July 24, 2006 motion to dismiss the complaint is denied without
22 prejudice;

23 2. Within thirty days from the service of this order, defendant shall file and serve
24 an answer or a new motion to dismiss the amended complaint. If defendant's response is a
25 motion to dismiss, plaintiff shall file his opposition or statement of non-opposition within thirty
26 days from the service of the motion. Defendant's reply, if any, shall be filed within fourteen days
thereafter;

3. Defendant's July 24, 2006 request for judicial notice is granted; and

4. Plaintiff's August 14, 2006 motion for preliminary injunction is denied as
defective and premature.

Also, IT IS HEREBY RECOMMENDED that plaintiff's September 14, 2006
motion to reinstate declaratory relief and damages be denied.

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1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
3 days after being served with these findings and recommendations, any party may file written
4 objections with the court and serve a copy on all parties. Such a document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
6 shall be served and filed within ten days after service of the objections. The parties are advised
7 that failure to file objections within the specified time may waive the right to appeal the District
8 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 DATED: December 7, 2006.

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13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

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